



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
Of A and K Services, LLC

Case No.: TR-11-0044

FINAL DECISION

On August 19, 2011, employees of the Division of Motor Vehicles, Department of Transportation filed two claims with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of A and K Services, LLC. The claims along with documents gathered by the Department during its investigation of the claim were referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on November 30, 2012. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Transportation
Division of Motor Vehicles
Dealer and Agent Section – Investigator McCluskey
P.O. Box 7909
Madison, WI 53707

Raymond Allen
A and K services, LLC
6136 Churchwood Circle
Greendale, WI 53129

Kiva Kinkle
A and K services, LLC
6136 Churchwood Circle
Greendale, WI 53129

Platte River Insurance Company
P.O. Box 5900
Madison, WI 53705-0900

FINDINGS OF FACT

1. A and K Services, LLC, d/b/a Blue Ribbon Auto, (Dealer) was a motor vehicle dealer licensed by the Wisconsin Department of Transportation (Department) pursuant to Wis. Stat. § 218.0111. The Dealer's facilities were located at 5829 West Villard Avenue, Milwaukee, Wisconsin. The Dealer is no longer in business.
2. The Dealer has had a surety bond satisfying the requirements of Wis. Stat. § 218.0114(5) in force commencing on December 18, 2006 (Platte River Insurance Company Bond No. 41094877).
3. Between July 24, 2009, and March 12, 2011, the Dealer submitted to the Department's Division of Motor Vehicles (DMV) numerous Wisconsin Title and Registration Applications (MV-11s) for vehicles that it sold to retail customers. The Dealer failed to submit the required fees to process some of the applications. The DMV received numerous consumer complaints in 2010 and 2011 against the Dealer due to the customers failing to receive titles and license plates for vehicles they purchased from the Dealer. The DMV was able to obtain the necessary paperwork allowing it to transfer titles and issue plates to the retail customers. However, the DMV never received the fees from the Dealer.
4. On August 19, 2011, the DMV submitted two claims against the surety bond of the Dealer totaling \$30,954.00. One claim is in the amount of \$3,920.00 and represents the sum of returned checks and returned check charges. The other claim is for unpaid fees and electronic payments by the Dealer that were not processed by the Dealer's financial institution. This claim was originally in the amount of \$27,034.00.
5. The Dealer's failure to submit the required fee along with the MV-11s constitutes a violation of Wis. Stat. § 342.06(1). A violation of Wis. Stat. § 342.06(1), in turn constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles).
6. The loss sustained by the DMV was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is allowable. After it filed its claims against the Dealer's surety bond, the DMV discovered additional payments made by the Dealer. The DMV subsequently submitted amended claims for the unpaid fees and rejected electronic payments. On August 29, 2012, the DMV reduced this claim to \$15,727.50. The DMV has provided documentation to support claims totaling \$19,647.50 (\$3,920.00 for the NSF checks and \$15,727.50 for the unpaid fees and electronic payments).

7. The DMV's claims arose during the time period between July 24, 2009, and March 12, 2011. The bond claims was filed within three years of the ending dates of one-year period for surety bonds issued by Platte River Insurance Company was in effect and are, therefore, timely claims.

CONCLUSIONS OF LAW

1. The DMV's claims arose during the time period between July 24, 2009, and March 12, 2011. Platte River Insurance Company issued one year surety bonds to the Dealer covering continuous one-year periods commencing on December 18, 2006. The claims arose during periods covered by the surety bonds.

2. The DMV filed claims against the motor vehicle dealer bond of the dealer on August 19, 2011. The bond claim was filed within three years of the last day of the period covered by the surety bonds. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claims are timely.

3. The DMV's loss was caused by an act of Dealer which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claims are allowable. The DMV has provided documentation to support a claim in the amount of \$19,647.50.

4. The Division of Hearings and Appeals has authority to issue the following order:

ORDER

The claims filed by the Division of Motor Vehicles against the motor vehicle dealer bond of A and K Services, LLC, d/b/a Blue Ribbon Auto, are APPROVED in the amount of \$19,647.50. The Platte River Insurance Company shall pay the Division of Motor Vehicles this amount for the loss attributable to the actions of A and K Services, LLC, d/b/a Blue Ribbon Auto.

Dated at Madison, Wisconsin on January 11, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
Mark F. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.

